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7 Attorneys for the Plaintiff
 8 Diane Cleary

FILED

08 DEC -3 PM 12:50

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIAax
DEPUTY

10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

DIANE CLEARY, v. GCFS, INC., Plaintiff, Defendant.	CASE NO: 08 CV 2241 DMS POR COMPLAINT FOR DAMAGES JURY TRIAL DEMANDED
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20 **INTRODUCTION**

- 21 1. The United States Congress has found abundant evidence of the use of
 22 abusive, deceptive, and unfair debt collection practices by many debt
 23 collectors, and has determined that abusive debt collection practices
 24 contribute to the number of personal bankruptcies, to marital instability, to the
 25 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
 26 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
 27 “FDCPA”), to eliminate abusive debt collection practices by debt collectors,
 28 to insure that those debt collectors who refrain from using abusive debt

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OR

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1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

- 3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.
- 12 3. Diane Cleary, (Plaintiff), through Plaintiff's attorneys, brings this action to
13 challenge the actions of GCFS, Inc., ("Defendant"), with regard to attempts by
14 Defendant to unlawfully and abusively collect a debt allegedly owed by
15 Plaintiff, and this conduct caused Plaintiff damages.
- 16 4. Plaintiff makes these allegations on information and belief, with the exception
17 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
18 Plaintiff alleges on personal knowledge.
- 19 5. Unless otherwise stated, Plaintiff alleges that any violations by Defendant was
20 knowing and intentional, and that Defendant did not maintain procedures
21 reasonably adapted to avoid any such violation.

22 **JURISDICTION AND VENUE**

- 23 6. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. §
24 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
- 25 7. This action arises out of Defendant's violations of the Fair Debt Collection
26 Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair
27 Debt Collection Practices Act, California Civil Code §§ 1788-1788.32
28 ("RFDCPA").

- 1 8. Because Defendant does business within the State of California, personal
- 2 jurisdiction is established.
- 3 9. Venue is proper pursuant to 28 U.S.C. § 1391(c).

PARTIES

- 5 10. Plaintiff is a natural person who resides in the City of Poway, County of San
6 Diego, State of California.

7 11. Defendant is from the City of Paso Robles, the County of San Luis Obispo,
8 and the State of California.

9 12. Plaintiff is obligated or allegedly obligated to pay a debt, and is a "consumer"
10 as that term is defined by 15 U.S.C. § 1692a(3).

11 13. Defendant is a person who use an instrumentality of interstate commerce or
12 the mails in a business the principal purpose of which is the collection of
13 debts, or who regularly collect or attempt to collect, directly or indirectly,
14 debts owed or due or asserted to be owed or due another and are therefore
15 debt collectors as that phrase is defined by 15 U.S.C. § 1692a(6).

16 14. Plaintiff is a natural person from whom a debt collector sought to collect a
17 consumer debt which was due and owing or alleged to be due and owing from
18 Plaintiff, and is a "debtor" as that term is defined by California Civil Code §
19 1788.2(h).

20 15. Defendant, in the ordinary course of business, regularly, on behalf of
21 themselves, or others, engage in debt collection as that term is defined by
22 California Civil Code § 1788.2(b), is therefore a debt collectors as that term is
23 defined by California Civil Code § 1788.2(c).

24 16. This case involves money, property or their equivalent, due or owing or
25 alleged to be due or owing from a natural person by reason of a consumer
26 credit transaction. As such, this action arises out of a consumer debt and
27 "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

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FACTUAL ALLEGATIONS

- 2 17. At all times relevant to this matter, Plaintiff was an individual residing within
3 the State of California.

4 18. At all times relevant, Defendant conducted business within the State of
5 California.

6 19. Sometime before December 2007, Plaintiff is alleged to have incurred certain
7 financial obligations.

8 20. These financial obligations were primarily for personal, family or household
9 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
10 §1692a(5).

11 21. These alleged obligations were money, property, or their equivalent, which is
12 due or owing, or alleged to be due or owing, from a natural person to another
13 person and are therefore a “debt” as that term is defined by California Civil
14 Code §1788.2(d), and a “consumer debt” as that term is defined by California
15 Civil Code §1788.2(f).

16 22. Sometime thereafter, but before January 2008, Plaintiff allegedly fell behind
17 in the payments allegedly owed on the alleged debt. Plaintiff currently takes
18 no position as to the validity of this alleged debt.

19 23. Subsequently, but before January 2008, the alleged debt was assigned, placed,
20 or otherwise transferred, to Defendant for collection.

21 24. Sometime between December 2007 and January 2008, Defendant mailed a
22 dunning letter to Plaintiff, which Plaintiff subsequently received.

23 25. This communication to Plaintiff was a “communication” as that term is
24 defined by 15 U.S.C. § 1692a(2), and an “initial communication” consistent
25 with 15 U.S.C. § 1692g(a).

26 26. This communication was a “debt collection” as Cal. Civ. Code 1788.2(b)
27 defines that phrase, and an “initial communication” consistent with Cal. Civ.
28 Code § 1812.700(b).

- 1 27. A copy of Defendant's letter was sent to both Plaintiff's home and Plaintiff's
2 place of employment. After receiving both letters from Defendant, Plaintiff
3 contacted Defendant regarding the alleged debt. Plaintiff contacted Bruce
4 White and left a detailed voicemail message. In her message, Plaintiff asked
5 Defendant to refrain from sending any correspondence to her place of
6 employment. Plaintiff also requested a detailed accounting of the alleged
7 charges on Plaintiff's account.
- 8 28. Plaintiff received no response from Bruce White, nor from any other of
9 Defendant's representatives regarding her voicemail message. Defendant also
10 failed to provide Plaintiff with an accounting of her alleged charges.
- 11 29. On or around April 8, 2008, Defendant sent another letter to Plaintiff
12 regarding the alleged debt. Defendant again sent a letter to Plaintiff's
13 residence as well as Plaintiff's place of employment, despite her earlier
14 request.
- 15 30. By sending this letter Defendant communicated with Plaintiff in connection
16 with the collection of a debt at her place of employment when such a
17 communication was not necessary to the collection of the alleged debt, and
18 Defendant knew or had reason to know that the Plaintiff's employer
19 prohibited the consumer from receiving such communication. Consequently,
20 Defendant violated 15 U.S.C. § 1692c(a)(3), and Cal. Civ. Code § 1788.12(a).
- 21 31. In Defendant's April 8, 2008, letter it stated ["Under Cal. Civ. Code §
22 1788.21(a) you are required to notify GCFS, Inc. of any changes in your
23 name, address or employment."] This communication by Defendant was a
24 false, deceptive, or misleading representation in connection with the debt
25 collection as Plaintiff is not a "creditor" or proposed creditor as defined by
26 Cal. Civ. Code § 1788.2(i), and as such is a violation of 15 U.S.C. § 1692(e).
- 27 32. On April 10, 2008, Plaintiff contacted Brent Peterson and left a voicemail
28 message instructing Defendant to refrain from sending any correspondence to

1 Plaintiff's place of employment, Plaintiff, again, requested a detailed
2 accounting of the alleged charges. Defendant failed to respond to her second
3 request.

- 4 33. Subsequently, Plaintiff received a letter from Defendant dated July 22, 2008.
5 Defendant's letter stated a lawsuit had been filed against Plaintiff regarding
6 the alleged debt, and demanded payment of the alleged debt. Defendant's
7 letter instructed Plaintiff to contact Defendant to avoid future wage
8 garnishments, vehicle levies, or liens against property.
- 9 34. Through this conduct, Defendant represented or implied that nonpayment of
10 any debt would result in, garnishment, attachment, or sale of property or
11 wages of a person when such action was not lawful, and Defendant did not
12 intended to take such action. Consequently, Defendant violated 15 U.S.C.
13 § 1692e(4). Because this action violated Fair Debt Collection Practices Act it
14 also violated Rosenthal Fair Debt Collection Practices Act, through Cal. Civ.
15 Code § 1788.17.
- 16 35. On July 25, 2008, Plaintiff wrote a letter to Mark McDowell stating that she
17 had twice contacted Defendant and demanded it refrain from sending
18 correspondence to Plaintiff's place of employment. Plaintiff also informed
19 Mark McDowell that she had twice requested a detailed accounting of the
20 alleged debt, but Defendant failed to respond to either.
- 21 36. Plaintiff received no response to her July 25, 2008, letter to Defendant.
22 Defendant also failed to provide Plaintiff with a detailed accounting of the
23 alleged debt. Plaintiff then contacted Defendant on August 9, 2008, and spoke
24 to Defendant's representative Gregory Cross. Gregory Cross abused and
25 harassed Plaintiff by saying, "... you will be dead before you could pay off the
26 balance due," and, "everyone has to take care of their children, that is no
27 excuse not to pay your bills."
- 28

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37. Plaintiff then asked Gregory Cross about Defendants threat to garnishing her wages. Plaintiff informed Gregory Cross that she would lose her job if this happened. Gregory Cross responded, "Well, that may be just what is going to happen. I am suppose to help you but I am not going to help you. You have been *served*." (emphasis added) This statement confused Plaintiff because Plaintiff had, in fact, not yet been served by Defendant.

38. Defendant's conduct was a false representation or implication that documents were legal process. Consequently, Defendant violated 15 U.S.C. § 1692e(13).

39. Through this conduct, Defendant engaged in conduct the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt. Consequently, Defendant violated 15 U.S.C. § 1692d.

40. Further, Defendant used false representations or deceptive means to collect or attempt to collect a debt or to obtain information concerning a consumer. Consequently, Defendant violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10).

41. Because this action violated Fair Debt Collection Practices Act it also violated Rosenthal Fair Debt Collection Practices Act, through Cal. Civ. Code § 1788.17.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. §§ 1692 ET SEQ.

42. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

43. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

1 44. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
2 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
3 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
4 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
5 each and every defendant, jointly and severally.

COUNT II

VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32

45. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
46. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.
47. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each and every defendant, jointly and severally.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from defendant, as follows:

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1 **COUNT I**

2 **FAIR DEBT COLLECTION PRACTICES ACT**

3 **15 U.S.C. §§ 1692 ET SEQ.**

- 4 48. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
5 49. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)
6 (2)(A);
7 50. An award of costs of litigation and reasonable attorney's fees, pursuant to 15
8 U.S.C. § 1692k(a)(3).

9 **COUNT II**

10 **ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

11 **CAL. CIV. CODE §§ 1788-1788.32**

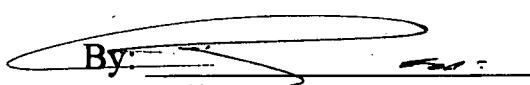
- 12 51. An award of actual damages pursuant to California Civil Code § 1788.30(a);
13 52. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §
14 1788.30(b);
15 53. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal.
16 Civ. Code § 1788.30(c).

17 **TRIAL BY JURY**

- 18 54. Pursuant to the seventh amendment to the Constitution of the United States of
19 America, Plaintiff is entitled to, and demands, a trial by jury.

21 Date: 11/2/08

HYDE & SWIGART

22 By: 

23 Tiffany G. Jensen
24 Attorneys for the Plaintiff

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Diane Cleary,

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

GCFS, Inc.,

08 DEC - 5 PM 12:50

Clerk U.S. District Court
SOUTHERN DISTRICT OF CALIFORNIA
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED BY:

Attorneys (If Known)

08 CV 2241 DMS POR

OGE
DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity
(Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4		
<input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5		
<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6		

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Death in Lending	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Securities/Commodities Exchange	<input type="checkbox"/> 850 Securities/Commodities Exchange	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 410 HIA (1395f)	<input type="checkbox"/> 875 Customer Challenge	
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 420 Other Food & Drug	<input type="checkbox"/> 12 USC 3410	
<input type="checkbox"/> REAL PROPERTY	<input type="checkbox"/> CIVIL RIGHTS	<input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 862 Black Lung (923)	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 430 Liquor Laws	<input type="checkbox"/> 863 DWCA/DIWV (405(g))	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 440 R.R. & Truck	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 450 Airline Regs.	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 460 Occupational Safety/Health	<input type="checkbox"/> FEDERAL TAX SUITS	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 470 Railway Labor Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 4790 Other Labor Litigation	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 491 Emp'l. Ret. Inc. Security Act		
		<input type="checkbox"/> IMMIGRATION		
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		
		<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|---|----------------------------|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 |
|---|---|--|---|--|---|----------------------------|

Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C § 1892 et seq.

VI. CAUSE OF ACTION

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/20/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 157168 AMOUNT \$350
APPLYING IFF 12/31/08

JUDGE

MAG. JUDGE

CR

ORIGINAL

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

157668 - MB

**December 04, 2008
13:35:08**

Civ Fil Non-Pris
USAO #: 08CV2241 CIVIL FILING
Judge.: DANA M SABRAW
Amount.: \$350.00 CK
Check#: 2707

Total-> \$350.00

FROM: DIANE CLEARY VS GCFS INC